

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:3:ATL:1:GL-607580-00
NEHooten

date: November 3, 2000

to: Dee Williams
Trust Fund Recovery Penalty Advisor
Stop 333-D

from: Associate Area Counsel (Atlanta)
Stop 1000-D

subject: Validity of Forms 2750 - Waivers Extending Statutory Period
for Assessment of Trust Fund Recovery Penalty

This memorandum will respond to your written request for advice dated July 24, 2000.

ISSUE

Whether the waivers (Forms 2750) extending the statutory period of assessment for the trust fund recovery penalty mailed to the taxpayer's representative on [REDACTED], and signed by the persons potentially responsible for the penalty on [REDACTED], are valid.

CONCLUSION

Based on the facts presented, the waivers (Forms 2750) extending the statutory period of assessment for the trust fund recovery penalty for the taxable years ending September 30, [REDACTED], December 31, [REDACTED], March 31, [REDACTED], June 30, [REDACTED], September 30, [REDACTED], December 31, [REDACTED], March 31, [REDACTED], June 30, [REDACTED], September 30, [REDACTED], December 31, [REDACTED], and March 31, [REDACTED], respectively, are valid.

FACTS

Based on your memorandum, and information contained in the administrative file, the facts are as follows.

The taxpayer, [REDACTED], is responsible for submitting quarterly employer federal tax returns

(Forms 941). The taxpayer timely filed Forms 941 for the tax periods ending September 30, [REDACTED], December 31, [REDACTED], March 31, [REDACTED], June 30, [REDACTED], December 31, [REDACTED], March 31, [REDACTED], June 30, [REDACTED], September 30, [REDACTED], December 31, [REDACTED], and March 31, [REDACTED], respectively. The taxpayer failed to timely file a Form 941 for the quarter ending September 30, [REDACTED].¹ Although the taxpayer timely filed Forms 941 for the above referenced tax periods, except the September 30, [REDACTED] period, it failed to remit withholding taxes for those periods.

On [REDACTED], Revenue Officer G. Dickerson mailed two Forms 2750 to the taxpayer's representative, and asked that he obtain the signatures of the persons potentially responsible for payment of the trust fund recovery penalty. The potentially responsible parties signed the Forms 2750, dated [REDACTED], and returned them to the Internal Revenue Service. On [REDACTED], Revenue Officer Dickerson received the signed waivers. Revenue Officer Dickerson and District Director Jim Donelson signed the Forms 2750 on [REDACTED].

On April 11, 2000, revenue officers in the former Georgia District (Field) became aware of the new notice provision created by the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98) requiring the Service to advise taxpayers of their rights under I.R.C. § 6501(c)(4)(B).

On [REDACTED], an Acting Group Manager mailed Publication 1035 to the potentially responsible parties.² The case history does not indicate that the Service ever sent Letter 907(DO) to the taxpayer, the taxpayer's representative, or the potentially responsible parties. The Service received no response from the taxpayer, the taxpayer's representative, or the potentially responsible parties, following the mailing of Publication 1035. To date, no one has questioned the validity of the Forms 2750.

¹ The Form 941 for the tax period ending September 30, [REDACTED], was not received by the Internal Revenue Service until [REDACTED].

² We are assuming that Publication 1035 (Rev. 12-1999) was sent since it was mailed on [REDACTED]. It is unclear whether Publication 1035 was mailed to the taxpayer or the taxpayer's representative. There are no copies of any cover letters referring to Publication 1035 in the administrative file.

DISCUSSION

Any person who is required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code and who willfully fails to do so, or willfully attempts to defeat or evade the tax, is liable for a penalty equal to the total amount of the tax not paid over to the government. I.R.C. § 6672(a).

Trust fund recovery penalties imposed under I.R.C. § 6672 are assessed and collected in the same manner as a tax. I.R.C. § 6671. The general limitations period for the assessment of tax is three years from the date on which the tax return is filed, or the unextended due date of the return, whichever occurs later. I.R.C. § 6501(a). Generally, the Service must assess the trust fund recovery penalty within three years of the filing of the employer's employment tax return.³ Before the expiration of the statute of limitations, the taxpayer and the Internal Revenue Service may agree in writing to extend the statute. I.R.C. § 6501(c)(4)(A).

The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98) created a new notice provision relating to extensions of the limitations period by adding subsection (B) to I.R.C. § 6501(c)(4). Generally, under I.R.C. § 6501(c)(4)(B), the Service must notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or limit the extension to particular issues or to a particular period of time, each time the Service asks the taxpayer to provide such consent. This notice provision applies to extension requests made after December 31, 1999.⁴

The Internal Revenue Code does not define when a request for an extension of the limitations period is made for purposes of

³ Where an employment tax return for any quarter ending with or within a calendar year is filed on or before April 15 of the succeeding year, the return is considered filed on April 15 of such succeeding year. In the case of a timely filed employment tax return, the I.R.C. § 6672 assessment must be made within three years from April 15 of the year following the year in which the taxes were required to be withheld and collected. See I.R.C. § 6501(b)(2); Morales v. U.S., 805 F.Supp. 1062 (D.P.R. 1992).

⁴ In order to comply with the notice requirements of I.R.C. § 6501(c)(4)(B), the Internal Revenue Service created Letter 907(DO) and Publication 1035. They are to be issued with Form 2750 extension requests made after December 31, 1999. See IRM § 121.2.22.3.

I.R.C. § 6501(c)(4)(B). Nor do the treasury regulations clarify when such a request is made. However, the regulations relating to I.R.C. § 6501(c) state that an extension becomes effective when both parties have executed the agreement. Treas. Reg. § 301.6501(c)-1(d). It follows that the request for an extension must be made on or before the date the extension becomes effective.

Here, the extension of the limitations period became effective on [REDACTED], the date the Revenue Officer and District Director signed the Forms 2750. The potentially responsible parties signed the Forms 2750 on [REDACTED]. Thus, the Service had to have requested the extensions on or before that date. It is logical to conclude that the Service made the extension request on [REDACTED], the date the Service mailed the letter enclosing the Forms 2750 to the taxpayer's representative, and asked that he obtain the signatures of the potentially responsible parties. At that time, neither the Internal Revenue Code, nor the Internal Revenue Manual (IRM)⁵, required notice to be given to taxpayers advising them of their right to refuse to extend the limitations period or limit the extension to particular issues or periods of time. Therefore, the subject Forms 2750 are valid.

Based upon the foregoing discussion, we conclude that the Service's request for extension of the limitations period was made for purposes of I.R.C. § 6501(c)(4) when the Service mailed the Forms 2750 to the taxpayer's representative on [REDACTED]. Thus, the Service's request for extension of the limitations period was made before December 31, 1999, the effective date of I.R.C. § 6501(c)(4)(B). Consequently, the Service was not required to provide notice to the taxpayer of the rights created under I.R.C. § 6501(c)(4)(B). Therefore, the Forms 2750 are valid.

⁵ The internal procedures for notifying taxpayers of their rights under I.R.C. § 6501(c)(4)(B) were not implemented until January 1, 2000.

We are enclosing herewith the administrative file you provided. We are closing our legal file at this time. However, if we can be of further assistance, you may contact the undersigned at telephone number (404)338-7944.

S/ Nancy E. Hooten

Nancy E. Hooten
Attorney (SBSE)

Attachment: Client Survey
Administrative Files (Seven separate files)

CC: GL-CASE

Kimberly Draper, Group 3400 Manager

Gail Dickerson, Revenue Officer

STOP 307-D
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